

## Remarks

Applicants have amended the specification to correct the typographical errors as set forth, *supra*. Support for replacing the empty symbol box on page 6 can be found, for example on page 25, lines 10-19. Accordingly, no new matter has been introduced by the amendments and their entry is respectfully requested.

Applicants have amended claims 1 and 34 to clarify that the claimed isolated DNA sequence comprises SEQ ID NO: 1.

Applicants have also amended claims 1 and 34 to an embodiment comprising a SEQ ID NO: 1 followed by SEQ ID NO: 5. Applicants submit that support for this amendment can be found, for example in SEQ ID NO: 5, on page 4, lines 4-7, and in the original claim 1. Accordingly, no new matter has been introduced by the amendments and their entry is respectfully requested.

Applicants have cancelled claim 3 without prejudice.

Applicants have amended claim 2 to an independent form. Accordingly, Applicants have also added new claims 35-50 which are otherwise identical to claims 3, 5-15, 17-19 and 34, except that they either depend from claim 2 (claims 3, 5-15, and 17-19) or include the subject matter of claim 2 in addition to claim 1 (claim 34). Accordingly, no new matter has been introduced by the new claims and their entry is respectfully requested.

Applicants understand that this is an amendment under 37 C.F.R. 1.116 and that introduction of new claims in the amendment is discretionary. Applicants sincerely solicit the Examiner to enter the new claims because they are essentially duplicate of the already examined claims as explained, *supra*.

Applicants sincerely appreciate the Examiner's guidance in addressing the objections set forth in the Office Action.

The Examiner objected to the typographical errors in the specification. Applicants believe that the amendments to the specification have obviated the objections.

The Examiner further objected to claims due to informalities. Specifically, claims 1, 2, 3 and 6 were objected to because claim 1 was drawn to an isolated DNA sequence which "encodes a functional human IL-18BP promoter encoded by SEQ ID NO:1". Applicants have amended the claim as proposed by the Examiner. Accordingly, Applicants believe that the objection has been obviated. Applicants have cancelled the recitation to fragments from claims 1 and 34.

Accordingly, the objection relating to the definition of the fragments has been rendered moot. The Examiner also requested clarification for the phrase “wherein the 3’ end of said DNA sequence or fragment thereof comprises one to 51 nucleotides from the 5’ end of SEQ ID NO:5” in claim 1. Applicants have amended claims as proposed by the Examiner. Accordingly, Applicants believe that the amendment has obviated the objection.

Similarly, Applicants have amended claim 2, as suggested by the Examiner. Claim 3 has been cancelled without prejudice. Accordingly, Applicants believe that these objections have been obviated or rendered moot as well.

Applicants appreciate that the Examiner found claim 2 to be free of prior art and allowable if written as an independent claim. Accordingly, Applicants have amended claim 2 to include all the limitations of claim 1. Applicants have also added new claims 35-50 to encompass embodiments originally set forth in claims 3, 5-15, 17-19 and 34, that are dependent on claim 2. Accordingly, Applicants believe that claims 2 and 35-50 are now in condition for allowance.

The Examiner rejected claims 1, 3, 5-9 and 34 under 35 U.S.C. 102(b) in view of Entrez Nucleotide Database entry for Accession No. AF110798, published 3 March 1999, and downloaded 29 October 2007 (“AF110798 sequence”).

Applicants respectfully submit that the rejection should be withdrawn for the following reasons.

Applicants have amended claims 1 and 34 to an embodiment comprising SEQ ID NO: 1 followed by 51 nucleotides as defined in SEQ ID NO: 5 at its 5’ end. Applicants respectfully submit that the AF110798 sequence does not disclose a sequence comprising SEQ ID NO: 1 with a SEQ ID NO: 5 at the 5’ end of the fragment.

Accordingly, in view of the amendment to claims 1 and 34, Applicants respectfully submit that the rejection should be withdrawn.

The Examiner rejected claims 1, 3, 5-9, 12, 13 and 34 under 35 U.S.C. 102(b) over Entrez Nucleotide Database entry for Accession No. AP000719, published prior to 23 July 2002 (“AP000719 sequence”) as evidenced by Osoegawa et al. (2001) Genome Res. 11:483-496.

Applicants respectfully submit that the rejection should be withdrawn for the following reasons.

Applicants have amended claims 1 and 34 to an embodiment comprising SEQ ID NO: 1 followed by 51 nucleotides as defined in SEQ ID NO: 5 at its 5' end. Applicants respectfully submit that the AP000719 sequence does not disclose a sequence comprising SEQ ID NO: 1 with a SEQ ID NO: 5 at the 5' end of the fragment.

Accordingly, in view of the amendment to claims 1 and 34, Applicants respectfully submit that the rejection should be withdrawn.

The Examiner rejected claims 1, 3, 7, 9, 10, 12 and 34 under 35 U.S.C. 102(b) over Hurgin et al. (2001) Journal of Interferon and Cytokine Research 24:S. 73 ("Hurgin").

Applicants respectfully submit that the rejection should be withdrawn for the following reasons.

Applicants have amended claims 1 and 34 to an embodiment comprising SEQ ID NO: 1 followed by 51 nucleotides as defined in SEQ ID NO: 5 at its 5' end. Applicants respectfully submit that Hurgin does not disclose a sequence comprising SEQ ID NO: 1 with a SEQ ID NO: 5 at the 5' end of the fragment.

Accordingly, in view of the amendment to claims 1 and 34, Applicants respectfully submit that the rejection should be withdrawn.

The Examiner further rejected claims 13-15 under 35 U.S.C. 103(a) over Hurgin et al., as in view of Guan et al. (1995) J. Biol. Chem. 270:21958-21965 ("Guan").

Applicants respectfully submit that the rejection should be withdrawn for the following reasons.

Applicants have amended claims 1 and 34 to an embodiment comprising SEQ ID NO: 1 followed by 51 nucleotides as defined in SEQ ID NO: 5 at its 5' end. Applicants respectfully submit that Hurgin does not disclose a sequence comprising SEQ ID NO: 1 with a SEQ ID NO: 5 at the 5' end of the fragment. Guan does not overcome this deficiency. All Guan teaches is a method of characterizing a different human gene promoters using a luciferase reporter vector and teaches that CHO cells are a suitable host for such an assay. There is nothing in Guan that would teach or suggest to put SEQ ID NO: 5 at the 5' end of SEQ ID NO: 1.

Accordingly, in view of the amendment to claims 1 and 34, Applicants respectfully submit that the rejection should be withdrawn.

The Examiner further rejected claims 1, 3, 5-13 17-19 and 34 under 35 U.S.C. 103(a) over Hurgin et al (above) in view of Novick et al (6,605,280 or WO 99/09063)(“Novick”).

Applicants respectfully submit that the rejection should be withdrawn for the following reasons.

As discussed, *supra*, Applicants have amended claims 1 and 34 to an embodiment comprising SEQ ID NO: 1 followed by 51 nucleotides as defined in SEQ ID NO: 5 at its 5' end. Applicants respectfully submit that Hurgin does not disclose a sequence comprising SEQ ID NO: 1 with a SEQ ID NO: 5 at the 5' end of the fragment. Novick does not overcome this deficiency. All Novick teaches is expression of IL-18bp under expression of a promoter in a recombinant AAV vector. There is nothing in Novick that would teach or suggest to put SEQ ID NO: 5 at the 5' end of SEQ ID NO: 1.

Accordingly, in view of the amendment to claims 1 and 34, Applicants respectfully submit that the rejection should be withdrawn.

In view of the foregoing, Applicants respectfully submit that all claims are in condition for allowance. At minimum, claims 2 and 35-50 should be allowable and the amendments to claims 1 and 34 will reduce the issues on appeal. Early and favorable action is sincerely solicited.

In the event that any additional fees, such as additional claims fees are required, the Commissioner is hereby is authorized to charge any such additional fees to Nixon Peabody LLP deposit account No. 50-0850.

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Customer No.: 50828

Respectfully submitted,

/Leena H. Karttunen/

David S. Resnick (Reg. No. 34,235)  
Leena H. Karttunen (Reg. No. 60,335)  
Nixon Peabody LLP  
(617) 345-6057 / 1367